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10/687,228	10/16/2003	Steven D. Culhane	02-200-US2	9854
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BACHMAN & LAPOINTE, P.C. 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510			EXAMINER HOEY, ALISSA L	
			ART UNIT 3765	PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/687,228  
Filing Date: October 16, 2003  
Appellant(s): CULHANE, STEVEN D.

**MAILED**  
**NOV 14 2005**  
**Group 3700**

\_\_\_\_\_  
Barry L. Kelmachter  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 09/12/05 appealing from the Office action  
mailed 04/11/05.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

4,722,099	Kratz	02-1988
5,593,754	Blauer et al.	01-1997

2,002,955

Lipson

05-1935

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 10-19 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for defining a stretch fabric material, does not reasonably provide enablement for defining a non-stretch fabric material. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to define the invention commensurate in scope with these claims. The specification does not define what the non-stretch material is made out of. All fabrics have some degree of stretch and without providing examples of the non-stretch material the invention is not enabled.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Kratz (US 4,722,099).

In regard to claims 10-13, Kratz provides a garment having a front portion and a rear portion (figures 2 and 3). A pair of arms being joined to the front and rear portions (figures 2 and 3, identifiers 62 and 64). Each of the arms having an elbow portion formed from a mesh fabric material and other portions from an artificial leather or leather fabric material (figures 2 and 3, identifiers 88, 62, 64, 92, 94, 90: column 1, lines 63-68 through column 2, lines 1-2). Additionally, the outer elbow portions are formed from a mesh fabric material based upon the outer elbow locations as illustrated by the instant Application (see figure 3, portion 92 and 94). The rear portions having at least one portion formed from a mesh fabric material (figure 3, identifiers 36, 38, 70 and 72: column 5, lines 17-53). The rear portions having a first and second side portions and a central portion wherein each of the first and second side portions are formed from a stretch fabric material (figure 3, identifiers 36, 38, 70 and 72; column 5, lines 17-53). The central portion is formed from an artificial leather or a leather material (figure 3, identifiers 102: column 1, lines 63-68 through column 2, lines 1-3). It is inherent that the mesh of Kratz has stretch since, Kratz uses flexible cloth mesh in the shoulder vents which is diagramed as the same mesh used in the elbows, underarms and sides of the back vents in the jacket, flexible cloth mesh has stretch. It is further inherent that the artificial leather used in the body of the garment is non-stretch. Artificial leather's are made by a woven base to which a solid and expanded vinyl substance is added making it "non-stretch".

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kratz in view of Blauer et al. (US 5,593,754).

Kratz provides a garment as described above in claim 10. However, Kratz fails to teach a liner within the garment formed from a breathable waterproof stretch fabric material and an adjacent stretch film material layer next to the stretch fabric material layer. Blauer et al. provides a garment having a liner formed of a breathable waterproof stretch fabric material and an adjacent stretch film material layer next to the stretch fabric material layer (figures 3 and 4, identifiers 22, 24, 30, 32 and 34: column 8, lines 5-19).

It would have been obvious to have provided the outer garment of Kratz with the liner of Blauer et al., since the dual liner would provide the outer garment of Kratz with superior breathability, water fastness and stretchability keeping the user dryer, cooler, more comfortable.

7. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kratz in view of Lipson (US 2,002,955).

Kratz provides an outer garment as described above in claim 10. However, Kratz fails to teach the outer garment having a hood that is detachable and collapsible to the outer garment.

Lipson provides an outer garment having a hood that is detachable and collapsible to the outer garment (figures 1-6, identifiers 2, 10, 12, 6 and 8; page 1, column 2, lines 12-45).

It would have been obvious to have provided the outer garment of Kratz with the hood of Lipson, since the outer garment of Kratz having a detachable and collapsible hood would provide the user with a hood that can protect the wearer's head from the elements and can also be detached and stored when not needed by the wearer.

#### **(10) Response to Argument**

I) Applicant argues that the rejection under 35 U.S.C. 112, first paragraph is improper, since it does not require an applicant to disclose and explain that which is commonly used and well known in the art.

Examiner notes that all fabrics and even non fabric materials have some degree of stretch. Applicant's specification does not give any suggestion as to what the parameters of "non-stretch" are, since no parameters are given to the term "non-stretch" it lacks enablement. Applicant is unclear if the "non-stretch" fabric is relatively "non-stretch" compared to the stretch fabric material, and if so to what relative degree relates the stretch and "non-stretch" materials.

Examiner acknowledges that the patent to Ash (US 4,663,784) speaks of stretch and non-stretch material, but further defines what the stretch and non-stretch material is, see column 2, lines 45-51.

Further, Examiner acknowledges that the patent to Ito (US 4,357,714) states that stretch and non-stretch fabric is used, but details the definition of stretch and non-stretch material, see column 1, lines 28-36. The non-stretch fabric of Ito is defined as a woven in which the fabric has a very limited ability to be stretched beyond it's original dimensions in both the warp and the weft direction.

Applicant's disclosure omits properly defining the term "non-stretch" relating to fabric materials. All woven material has some stretch, so the term "non-stretch" lacks enablement and is properly rejected under 35 U.S.C. 112, first paragraph as detailed above.

II) Applicant argues that claims 10 and 11-13 are not anticipated by Kratz, since Kratz fails to teach an outer elbow portion formed from a stretch fabric material and other portions formed of a non-stretch fabric material.

Examiner disagrees, since the term "non-stretch" has not been defined by Applicant's disclosure. Portions of Kratz are formed of artificial leather, artificial leather like all other materials has some stretch.

Kratz teaches mesh inner elbow portions (see identifiers 92, 94 of figure 3). The mesh portion of the shoulder vents of Kratz are formed of a flexible cloth mesh. This shoulder vent mesh is illustrated as the same mesh as inner elbow portions in the figures. Kratz does not ever indicate that the mesh portion of the inner elbow is different



than that of the shoulder vents and since it is disclosed in the figures as the same mesh as that of the inner elbow portions and is therefore inherently stretch.

Further, mesh material due to its construction has stretch. All mesh constructions whether made out of fabric material or metal will have some stretch.

The artificial leather of Katz is less stretchable or "non-stretchable" compared to the mesh portions of Kratz. Therefore, claims 10-13 are anticipated by Kratz.

III) Applicant argues that claims 14-16 are allowable over Kratz in view of Blauer et al., since liner of Blauer provided in the garment of Kratz would interfere with the ventilation that Kratz desires.

Examiner disagrees since the liner of Blauer et al. provided in the garment of Kratz would still provide ventilation to the user through the mesh portions. The liner of Blauer et al. is breathable which would still allow air to ventilate the user. The degree of ventilation might be effected but the ability of water to enter the ventilation would be greatly reduced keeping the user dry and ventilated at the same time. Liners are provided in garments to further protect the user from outside elements, adding a liner to Kratz would only further protect the user during riding but still providing ventilation portions for breathability.

IV) Applicant argues that claims 17-19 are allowable over Kratz in view of Lipson, since the hood of Lipson would create an unsafe environment for the user.

Examiner disagrees, since a hood provided on any garment provides additional protection to the user during inclement weather. A hood provided on the garment of Kratz would not interfere with the helmet of a user riding a motorcycle, since the hood

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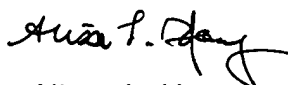
would be placed on the user's head before the helmet was donned to provide extra insulation to the wearer's head. Not only does the hood provide extra insulation to the user's head, but it also provides a better fit with a helmet that is a little roomy preventing it from slipping around.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Alissa L. Hoey

Conferees:

John Calvert



Danny Worrell

